

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

JOINT APPLICATION OF YMG)
CORPORATION AND TIDEWATER)
ENVIRONMENTAL SERVICES, INC. FOR)
APPROVAL OF THE SALE OF ASSETS AND)
TRANSFER OF CPCN FROM YMG) PSC Docket No. 12-497
CORPORATION TO TIDEWATER)
ENVIRONMENTAL SERVICES, INC.)
(FILED NOVEMBER 7, 2012))

IN THE MATTER OF THE APPLICATION OF)
TIDEWATER ENVIRONMENTAL SERVICES,)
INC. FOR A GENERAL RATE INCREASE) PSC Docket No. 12-498 WW
FOR WASTEWATER SERVICES FOR THE)
CUSTOMERS OF THE PLANTATIONS)
RESIDENTIAL COMMUNITY WASTEWATER)
SYSTEM (FILED NOVEMBER 7, 2012))

REBUTTAL TESTIMONY

OF

A. BRUCE O'CONNOR

MAY 20, 2013

1 **TIDEWATER ENVIRONMENTAL SERVICES, INC.**

2 **REBUTTAL TESTIMONY OF A. BRUCE O'CONNOR**

3 **Q. Please state your name.**

4 A. My name is A. Bruce O'Connor.

5 **Q. Are you the same A. Bruce O'Connor who previously submitted**
6 **prepared pre-filed direct testimony in this proceeding?**

7 A. Yes, I am.

8 **Q. What is the purpose of this testimony?**

9 A. The purpose of this testimony is to provide information pertaining to a
10 settlement (the "Settlement Agreement") reached amongst Tidewater
11 Environmental Services, Inc. ("TESI" or the "Company"), YMG Corporation
12 ("YMG"), the Staff of the Delaware Public Service Commission ("Staff"), and
13 the Attorney General of the State of Delaware ("AG") (collectively, the
14 "Settling Parties") and to also rebut certain aspects of the direct testimony of
15 Robert Dickey, Chairman, Joint Wastewater Committee of The Plantations
16 and The Plantations East Communities (the "Plantations Committee").

17
18 **Q. Can you provide the details of the Settlement Agreement?**

19
20 A. Attached to my rebuttal testimony is the final version of the Settlement
21 Agreement (Exhibit ABO-R-1) as executed by TESI and YMG. Due to time
22 constraints, TESI was unable to coordinate receipt of the signature of the AG
23 and Staff to be included with this submission. However, TESI has been
24 informed that both the AG and Staff will sign the Settlement Agreement this
25 week. Once the completed Settlement Agreement is available, it will be
26 circulated to all the parties in this matter. In summary, the Settling Parties
27 have agreed to a revenue increase of \$79,396.00 based on a Return on Equity
28 of 10.0%. The increase will be implemented one year from the date of the
29 sale of the YMG assets to TESI, subject to certification by TESI that the

1 various improvements and repairs to the Plantations wastewater treatment
2 system have been completed.

3
4
5 **Q. Do you believe that the Settlement Agreement is in the best interest of the**
6 **customers that TESI will serve if it completes the purchase of the YMG**
7 **assets?**

8
9 A. Yes, I do. It is my belief that the Settling Parties would not have entered into
10 a Settlement Agreement if it wasn't in the best interest of the Plantations
11 customers. TESI has methodically investigated and inspected the Plantations
12 wastewater treatment system and has worked closely with the Department of
13 Natural Resources and Environmental Control ("DNREC") to better
14 understand the needs of this community wastewater system. DNREC has
15 specifically supported the proposed TESI purchase of YMG asset as noted in
16 the letter provided in discovery response DPA/PSC-15 (Exhibit ABO-R-2).
17 Notwithstanding its comprehensive due diligence, TESI has assumed a certain
18 level of additional financial risk in forecasting operations and maintenance
19 expenses for fiscal periods that are beyond its original expectation due to
20 delays in closing on the proposed transaction. Notwithstanding this delay, as
21 the proposed settlement indicates, TESI has accepted terms that would
22 otherwise have given TESI the right to terminate the proposed asset purchase
23 transaction between TESI and YMG.

24
25 **Q. Do you have specific testimony regarding elements of Mr. Dickey's pre-**
26 **filed Direct Testimony that you wish to address?**

27
28 A. Yes.

29
30 **Q. Do you agree with Mr. Dickey's assertion that the \$16,000 DNREC**
31 **assessment should be excluded for the cost to set rates?**

1 A. Mr. Dickey and the Staff and AG witness, Howard Woods, both objected to
2 including the DNREC assessment in the rate setting model. I do not agree
3 with the adjustment proposed by these gentlemen, but in an effort to minimize
4 the regulatory cost to prosecute this Joint Application, TESI has agreed to
5 remove this cost from the model assuming that the settlement is approved.
6 This concession was one of the components that resulted in the revenue
7 increase of \$79,396.00 in the Settlement Agreement.

8

9 **Q. In Item #12, on page 5 of Mr. Dickey's testimony, Mr. Dickey proposes**
10 **that the cost for the improvements proposed by TESI be reduced by**
11 **\$160,000. Do you agree with Mr. Dickey?**

12

13 A. To better understand Mr. Dickey's cost determination, TESI propounded
14 discovery on that topic. The response from Mr. Dickey was submitted in
15 TESI-INT-1 (Exhibit ABO-R-3) and provided no concrete reason for reducing
16 the cost of the improvements. Other than searching the internet for generator
17 prices, Mr. Dickey felt that the capital improvement estimates were high and
18 that a decision was made to reduce the costs by 25%. The Company has
19 provided sufficient testimony and support for the proposed improvements.
20 Mr. Dickey's estimate, with all due respect, is based on speculation and
21 hearsay. Moreover, Mr. Dickey has not been qualified as an expert on
22 wastewater treatment plant construction or costs.

23

24 **Q. Do you agree with the rate phase-in proposed by Mr. Dickey?**

25

26 A. The phase-in proposed by Mr. Dickey does not provide sufficient revenues to
27 TESI to support the provision of safe, adequate and proper service. TESI did
28 concede to an extended phase-in in the Settlement Agreement, as noted above,
29 that differs from my pre-filed direct testimony. I had recommended a three-
30 phase increase beginning at the date TESI purchase the YMG assets. Mr.
31 Dickey suggested a phase in that would begin with the first increase on the

1 date of purchase. Under the Settlement Agreement, if approved, there would
2 be no increase until one year after the purchase of the YMG assets.

3
4 **Q. Do you agree that revenues from an activity that has nothing to do with**
5 **the provision of regulated wastewater should be included in setting rates?**

6
7 A. Absolutely not. Staff and AG witness Mr. Woods included revenues
8 associated with the provision of propane gas service to residents of the
9 Plantations communities in his rate setting model. Mr. Woods also indicated
10 in his testimony that by removing costs associated with the gas service from
11 rate base, then he would agree that the revenues should also be excluded. As
12 part of the Settlement Agreement, TESI removed the relevant costs and
13 revenues. In an effort to recognize costs concerns raised by Mr. Dickey, if the
14 Settlement Agreement is approved, under paragraph 12 of the Settlement
15 Agreement, TESI has agreed to share 40% of these non-regulated revenues,
16 outside of the rate setting arena, with the residents of the Plantations
17 communities. This offering is documented in the Settlement Agreement and
18 was initially disclosed in DPA/PSC-50 (Exhibit ABO-R-4).

19
20 Q. In PSC Docket No. 12-497, TESI and YMG requested permission for YMG to
21 transfer YMG's CPCN to TESI. Have any of the parties opposed this transfer?

22
23 A. No. All parties, including the Plantations Committee, have recommended
24 approval of the transfer.

25
26 **Q. Does this conclude your testimony?**

27 A. Yes.

28